

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ELOY QUILES,	:	CIVIL ACTION NO. 1:09-CV-580
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
UNITED STATES DEPARTMENT	:	
OF DEFENSE and DEPARTMENT	:	
OF THE NAVY,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 10th day of December, 2009, upon consideration of the report¹ (Doc. 17) of the magistrate judge, recommending that the motion (Doc. 3) to dismiss be granted, without prejudice to plaintiff to seek leave to amend his complaint, and, following an independent review of the record, it appearing that the complaint in the above-captioned matter alleges violations of plaintiff's rights under 42 U.S.C. § 1981 and the Fourteenth Amendment of the United States Constitution, and that the magistrate judge concludes that the doctrine of sovereign immunity bars the plaintiff's claims, and that the magistrate judge's report recommends dismissal of the complaint, and it further appearing that neither party has objected to the magistrate judge's report and recommendation,² and that there is no clear error on the face of the record,³ see Nara v.

¹ The court notes that the magistrate judge prepared another report (Doc. 15) and subsequently amended it to clarify that the recommended dismissal be entered without prejudice to the defendants later renewing any motion to dismiss and pursuing any other potentially dispositive legal issues not yet adjudicated.

² Objections were due by December 4, 2009. As of the date of this memorandum and order, none have been filed.

Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”), it is hereby ORDERED that:

1. The report of the magistrate judge (Doc. 17) is ADOPTED.
2. The earlier report of the magistrate judge (Doc. 15) is REJECTED as moot.
3. The motion to dismiss (Doc. 3) is GRANTED.
4. The case is DISMISSED, without prejudice to plaintiff to seek leave to amend his complaint, provided that plaintiff seeks leave to amend within 30 days of the entry of this order and provides an explanation for his prior failure to comply with the court’s instructions.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

³ When parties fail to file timely objections to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to *de novo* review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court’s review is conducted under the “plain error” standard); Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998) (holding that the court’s review is limited to ascertaining whether there is “clear error on the face of the record”); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for “clear error”). The court has reviewed the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.